

North Smithfield Zoning Board of Review  
July 12, 2016, 7:00 pm  
Kendall Dean School  
83 Green Street, Slatersville, RI

The Chair called the meeting to order at 7:04 pm.

1. Roll Call

Present: Chair William Juhr, Scott Martin, Mario DiNunzio, Robert Najarian, and Vincent Marcantonio. Also present was Asst. Town Solicitor, Stephen Archambault and Building Official, Chris Chianese. Absent: Steven Scarpelli and Paul Pasquariello.

2. Mr. Juhr made disclosure of no compensation or pension credits are received by the board members.

3. Approval of minutes, June 14, 2016.

Mr. Martin made a motion to approve the June 14, 2016 minutes, seconded by Mr. DiNunzio, with all in favor.

4. Vote to approve the written decision for the application of the Rotary Club of Woonsocket, requesting relief from previous stipulations for relief granted by a Special Use Permit for entertainment that was granted November 6, 2007, for Plat 005, Lot 300, 200 Industrial Drive, Zoning District: Manufacturing (M) pursuant to the provisions of the Zoning Ordinance and R.I.G.L. 45-23-57.

Mr. Najarian stated he referenced “carnival” as being specifically not allowed but it was not listed in the decision. The Chairman asked the Asst. Solicitor to amend the decision to add carnival. Mr. Najarian made a motion to accept the amended decision, seconded by Mr. DiNunzio. Roll call vote was as follows: YES: Mr. Martin, Mr. Najarian, Mr. DiNunzio, and Mr. Juhr. Motion passes with a vote of 4-0.

5. Vote to approve the written decision for the application for James Carey, requesting dimensional variance for relief for insufficient frontage for AP 17, Lot(s) 1 and 127, for a Minor Subdivision Plan pursuant to the provisions of the Zoning Ordinance and R.I.G.L. 45-23-57, located at 117 Sayles Hill Road, Zoning District: RS.

Mr. Martin made a motion to approve the written decision for James Carey, seconded by Mr. DiNunzio, with all in favor.

6. Application of Chaouki Khalil, owner, Applicant, requesting a Special Use Permit from Section: 5.4.6.1(a) of the Zoning Ordinance. Locus is Greenville Road and Smithfield Road, Plat 09 Lot 436, Zoning District: BN Business Neighborhood.

Mr. Chaouki Khalil was sworn in.

Mr. Juhr submitted the following Exhibits.

P1) Approval of Certificate of Zoning Compliance, Application No. ZC-16-00 changed to ZC-16-37 due to a clerical error as listed on the third page of the package, 6 pages stapled together, date 6-22-2016, Plat 9, Lot 436; page 2 listed as Page 5-11, 5.4.6. Restaurants and entertainment circled Restaurant/Banquet Facility; page 3 Application for Hearing before Zoning Board, No# ZC-16-37, date 6/20/16; page 4 Application for Hearing before Zoning Board, No# ZC-16-37 time stamp June 30, 2016; page 5 Office of the Building and Zoning Official, No. ZC-16-37, time stamp June 23, 2016; page 6 letter from Chaouki Khalik requesting the needs of the application dated 6-21-16 signed by the owner, time stamped June 21, 2016.

P2) Abutters list, 14 addresses.

P3) An 8" x 11" Site Plan for Philippe Realty LLC, 503 Smithfield Road, North Smithfield, RI, Plat 9, Lot 436. In the box NRC Associates, P.O. Box 14459, East Providence, RI the document is not signed or dated.

P4) Town of North Smithfield letterhead, Invoice 105, June 16, 2016, Applicant Chaouki Khalik, Plat 009-Lot 436 showing applicant paid \$1,119.08.

P5) An 8" x 14" Plat map, printed on 6/20/2016, dash circle around the property.

P6) Floor Plans, Map 9, Parcel 436, 503 Smithfield Road, North Smithfield, RI, dated June 18, 2016.

Mr. Khalil stated he would like to have seating for 15 persons outside in the summer. He has an existing a non-conforming restaurant. Mr. DiNunzio said they have a convenience store and takeout food in addition to having a gas station and they want distant relief to set up the tables. The applicant stated they do not have space for the customers to wait for their food.

Mr. Najarian asked why the applicant needs a pass through window. The applicant said it would be more convenient for the customers to order the food from outside. Mr. DiNunzio said the issue for this application is the special use and the setbacks.

Mr. Chianese stated outside the Zoning Ordinance with it being silent, the Building Code recognizes that once seating for food has been established then it has to be looked at as a restaurant use or A1 assembly. Mr. DiNunzio said the applicant prepares food on site. Mr. Chianese said the zoning compliance was issued to allow an expansion of the pre-existing non-conforming situation. Not sure how it was not required to go before this board before. This was approved by the former Building Official, Bob Benoit, in 2011 as an ancillary use to the gas station which had previously been a non-conforming by its past existence. Mr. Chianese said the site plan in conjunction with the floor plan to see it puts at zero property line with no setback for relief for 15 seats in the 23 x 30 area. There is adequate parking with two people per car. Mr. Chianese excludes the pump area for parking.

Mr. Najarian asked if we define the tables as fixtures. Mr. Chianese said the tables are non-permanent fixtures and only used in the summer. The Application for Hearing before Zoning Board, page 3, only lists Section 5.6.2 on page 4 Mr. Chianese had the applicant add 5.4.6.1(a) Restaurant up to 50 people and 5.5.2(BN) side set back. Mr. Archambault stated by legal definition a fixture must be attached to something on the structure. The applicant has existing restrooms as identified on the floor plan.

Mr. Najarian asked if the applicant would put a fence around the area. The applicant already has a fence around the area with four existing lights.

Mr. Khalil said the people want to sit outside. Mr. Jühr told the applicant he is asking for 100% relief and this is non conforming. Mr. Najarian said Mr. Chianese tried to define the issue and maybe consider as a restaurant but the tables are not affixed to a structure.

Mr. Jühr does not want a window. Mr. Martin asked if the applicant could get a building permit to install a window. Mr. Chianese said he could not stop the applicant. Mr. Chianese said any expansion or alteration of an existing structure would require zoning board approval.

Mr. Jühr stated the property is .46 acres and the applicant is already serving gas, has takeout food and quick mart. Mr. DiNunzio asked Mr. Archambault if the applicant can put picnic tables outside the area now given the permissions they have. Mr. Archambault said the Zoning Official said the Ordinance is silent it is probably permitted.

Mr. Najarian summarized by stating the tables are not permanent fixtures therefore they don't encroach on the setbacks; the current setback is compliant with the side yard so that would take the variance request out of the equation; the applicant is asking to alter the nonconforming structure by putting a pass thru window. Does the Special Permit apply if the hot deli interpretation is not being expanded given that they could put the tables outside and have complete compliance – no special permit if we go by what is defined as a hot deli. Mr. Chianese agrees with everything Mr. Najarian presented. Mr. Najarian said the board could put conditions, the only way is through the Special Use Permit and that would be if the alteration was allowed and the window was installed. Mr. Chianese said it would be expansion of special use.

Mr. Chianese said the convenience store portion is considered ancillary or accessory to the primary use which was a gas station. It was changed from a service station to convenience store. Mr. Archambault said the tension between the restaurant operation and its expansion and how far that expansion can go which then becomes the principle use. The applicant is not looking for a drive thru. Mr. Najarian said it is unfair to punish the applicant for a fault of the former Building Inspector issue permit mishap. Mr. Jühr said the applicant could put picnic tables as long as they are not a fixed structure but he is opposed to the thru window – the applicant was granted generous relief already. The applicant said the window is convenient especially during rush hour which is going to and from work.

Paula Desmarais was sworn in. Ms. Desmarais owns the property on the side wants to know the hours they would close. The applicant said they close at 10pm weekday and midnight on weekend. Concerned with future expansion and parking directly near her property. Mr. Jühr

asked the applicant why they are open until midnight. Mr. Chianese was not aware of the hour limitations. Mr. Archambault said the Council imposes the time limitations. The applicant said the convenience store is open 24 hours and people can buy gas 24 hours.

Mr. Chianese suggested the application remain as they asked for outside seating and a pass thru window to serve – an amendment would muddy the waters. Mr. Archambault stated this has been advertised as an application for relief under 5.4.6.1(a) for seating relief less than 50 people and relief from 5.5.2 minimum side setback of 15 feet. The board should focus on that relief.

Mr. DiNunzio proposed approval of the applicant's request for seating for 15 persons for outdoor dining with no reference to Special Use Permit with stipulations that no service will be provided after 9pm. Mr. Archambault suggested a remedy to the proposal in the light of the Special Use Permit.

Mr. Juhr said the meeting should be continued and the applicant submits a revised application – that is the cleanest way to do it. The applicant can have picnic tables not fixed to the ground. The problem with the pass thru window is that it is nonconforming and needs approval from the board and the applicant did not express a hardship. The applicant has been granted a lot of relief already through the prior Building Official and they may not have been granted this relief if they came before the board. The applicant has a good business and the Town is happy that they do. If the applicant wants the pass thru window they would have to come before the board with proper advertising.

Mr. DiNunzio suggested the board table the application and if the applicant wants to reapply for the window it's up to them. Mr. Archambault stated if the applicant withdraws the application then it is no longer before the board and if the board tables it then all the testimony remains and continued to another date. Mr. Juhr stated that the applicant can have three picnic tables as long as they are not fastened to the ground and withdraw the application then they are all done. If they want the pass thru window they need to revise the application and advertise to be continued to a date certain.

John Rogers was sworn in. Mr. Rogers has concerns with the hours of operation as the applicant has conflicting statements as to the hours. Mr. Juhr stated the Town Council is responsible for setting the hours of operation. Mr. DiNunzio stated the board is recognizing the fact and not taking any action on the picnic tables – the board is not giving them permission. There is no law preventing the applicant from putting picnic tables outside. Mr. Juhr said the board cannot decide on the hours of operation only the Town Council.

Mr. Juhr said it appears the applicant wants to withdraw the application and put up temporary picnic tables for no more than 15 people. They should be a good neighbor and stop people from sitting at the tables at 9pm. The Town could waive the fees if the applicant wants to come before the board again.

The applicant withdrew the application – they have the right to three picnic tables that are temporary with no more than 15 people with regard to Section 5.4.6.1(a) restaurant seating up to 50 people and relief from 5.5.2.

7. Adjourn

Mr. DiNunzio made a motion to adjourn the meeting at 8:44 p.m. Mr. Martin seconded the motion, with all in favor.